

Introduced by Senator Hernandez

February 24, 2012

An act to add Sections 17207.9 and 24347.11 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1544, as introduced, Hernandez. Income taxes: disaster losses: County of Los Angeles.

The Personal Income Tax Law and the Corporation Tax Law provide for the carryover to specified taxable years of specified losses sustained as a result of certain disasters occurring in California in an area determined by the President of the United States to warrant specified federal assistance, or proclaimed by the Governor to be in a state of emergency. Those laws also allow individual and corporate taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their individual and corporate tax liabilities.

This bill would extend these provisions to losses sustained in the County of Los Angeles as a result of the severe winds that occurred in November 2011. This bill would authorize a taxpayer to make an election to claim a deduction for those losses on the tax return for the preceding year, in lieu of any other deductions authorized under those laws, including deductions for net operating losses.

This bill would make a legislative finding and declaration relating to the statewide public purpose served by the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 17207.9 is added to the Revenue and Taxation Code, to read:

17207.9. (a) Upon the election of a taxpayer, in lieu of any other deduction allowable under this part, an excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses sustained in the County of Los Angeles as a result of the severe winds that occurred in November 2011.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 17276.20, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) This section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section shall not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code if an election is made to take the deduction allowable under this section.

1 (f) For purposes of this section, “adjusted taxable income” shall
2 be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

3 (g) For losses described in subdivision (a), the election under
4 Section 165(i) of the Internal Revenue Code may be made on a
5 return or amended return filed on or before the due date of the
6 return (determined with regard to extension) for the taxable year
7 in which the disaster occurred.

8 SEC. 2. Section 24347.11 is added to the Revenue and Taxation
9 Code, to read:

10 24347.11. (a) Upon the election of a taxpayer, in lieu of any
11 other deduction allowable under this part, an excess disaster loss,
12 as defined in subdivision (c), shall be carried to other taxable years
13 as provided in subdivision (b), with respect to losses sustained in
14 the County of Los Angeles as a result of the severe winds that
15 occurred in November 2011.

16 (b) (1) In the case of any loss allowed under Section 165 of the
17 Internal Revenue Code, relating to losses, any excess disaster loss
18 shall be carried forward to each of the five taxable years following
19 the taxable year for which the loss is claimed. However, if there
20 is any excess disaster loss remaining after the five-year period,
21 then the applicable percentage, as set forth in paragraph (1) of
22 subdivision (b) of Section 24416.20, of that excess disaster loss
23 shall be carried forward to each of the next 10 taxable years.

24 (2) The entire amount of any excess disaster loss as defined in
25 subdivision (c) shall be carried to the earliest of the taxable years
26 to which, by reason of subdivision (b), the loss may be carried.
27 The portion of the loss which shall be carried to each of the other
28 taxable years shall be the excess, if any, of the amount of excess
29 disaster loss over the sum of the net income for each of the prior
30 taxable years to which that excess disaster loss is carried.

31 (c) “Excess disaster loss” means a disaster loss computed
32 pursuant to Section 165 of the Internal Revenue Code, which
33 exceeds the net income of the year of loss or, if the election under
34 Section 165(i) of the Internal Revenue Code is made, the net
35 income of the year preceding the loss.

36 (d) This section and Section 165(i) of the Internal Revenue Code
37 shall be applicable to any of the losses listed in subdivision (a)
38 sustained in any county or city in this state which was proclaimed
39 by the Governor to be in a state of disaster.

1 (e) Any corporation subject to Section 25101 or 25101.15 that
2 has disaster losses pursuant to this section shall determine the
3 excess disaster loss to be carried to other taxable years under the
4 principles specified in Section 25108 relating to net operating
5 losses.

6 (f) Losses allowable under this section shall not be taken into
7 account in computing a net operating loss deduction under Section
8 172 of the Internal Revenue Code if an election is made to take
9 the deduction allowable under this section.

10 (g) For losses described in subdivision (a), the election under
11 Section 165(i) of the Internal Revenue Code may be made on a
12 return or amended return filed on or before the due date of the
13 return (determined with regard to extension) for the taxable year
14 in which the disaster occurred.

15 SEC. 3. The Legislature finds and declares that this act fulfills
16 a statewide public purpose because all of the following:

17 (a) On December 9, 2011, the Governor of California made a
18 finding that conditions of extreme peril to public health and safety
19 to persons and property existed due to the severe storms occurring
20 in November 2011 in the County of Los Angeles and proclaimed
21 a state of emergency to exist within that county, thus qualifying
22 affected persons for various forms of governmental assistance and
23 relief.

24 (b) This act is consistent with, and supplements, the proclaimed
25 disaster assistance and relief by providing necessary tax relief to
26 the affected jurisdiction and persons to allow them to maintain
27 essential basic services and repair damage to, and restore, their
28 homes and businesses.

29 SEC. 4. This act provides for a tax levy within the meaning of
30 Article IV of the Constitution and shall go into immediate effect.